

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**COUNTY OF OSWEGO INDUSTRIAL
DEVELOPMENT AGENCY,**

Plaintiff,

-v-

5:05-CV-926

**FULTON COGENERATION ASSOCIATES, LP.,
LIONS CAPITAL MANAGEMENT, LLC, aka LION
CAPITAL MANAGEMENT, LLC, FIMAB,
PROMENEUR & HAUSMANN, INC., EL PASO
MERCHANT ENERGY-PETROLEUM COMPANY.,
and ANR VENTURE FULTON COMPANY,**

Defendants.

APPEARANCES:

Hiscock & Barclay, LLP
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Syracuse, New York 13221
Attorneys for Plaintiff

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Lion's Capital Management, LLC a/k/a Lion Capital Management,
LLC, and Fimab, Promeneur & Hausmann, Inc.

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Attorneys for El Paso Merchant Energy-Petroleum Company and
ANR Venture Fulton Company

Hon. Norman A. Mordue, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

On March 22, 2006 (Dkt. No. 38) the Court granted plaintiff's motion for an order of attachment relating to the claims and rights of defendant Fulton Cogeneration Associates, LP. ("FCA") in litigation pending in New York Supreme Court, County of Oswego, captioned *Fulton Cogeneration Associates, LP. v. The New York Chocolate and Confections Company*, Index No. 1185/05, and any debts owed to FCA in connection therewith. The Court signed an order of attachment on March 31, 2006 (Dkt. No. 41).

On June 20, 2006 (Dkt. No. 47), the Court directed FCA and the garnishee, New York Chocolate and Confections Company, to show cause why an order should not be entered granting plaintiff's application for extension of its time to commence a special proceeding and for modification of the Order of Attachment to include a certain turbine and other equipment of FCA.

By Order to Show Cause dated July 11, 2006 (Dkt. No. 55), the Court directed the parties to show cause why an order should not be issued granting the motion (Dkt. No. 53) of Hancock & Estabrook, LLP ("Hancock") to withdraw as attorneys for defendants Fulton Cogeneration Associates, LP., Lion's Capital Management, LLC a/k/a Lion Capital Management, LLC, and Fimab, Promeneur & Hausmann, Inc. ("the Fulton defendants"). The Order to Show Cause stayed all proceedings in this action until further order of the Court, in order to allow time for resolution of the motion and, if warranted, to permit the Fulton defendants to obtain substitute counsel. The July 11, 2006 Order to Show Cause further directed that the temporary restraining order in the Order to Show Cause of June 20, 2006 (as extended and modified by the June 26, 2006 Letter Request "So Ordered" by this Court on June 27, 2006 (Dkt. No. 51)) would remain in full force and effect.

Thereafter, on July 18, 2006 (Dkt. No. 59), Lowenstein, Sandler PC also moved to withdraw as attorneys for the Fulton defendants. Due to the motions to withdraw, the Court

adjourned the briefing schedule pertaining to plaintiff's June 16, 2006 motion (Dkt. No. 45).

On July 21, 2006, the Court granted the withdrawal motions. Substitute counsel has now appeared on behalf of the Fulton defendants. Accordingly, it is

ORDERED that the stay of proceedings granted in Order to Show Cause dated July 11, 2006 (Dkt. No. 55) is lifted; and it is further

ORDERED that the temporary restraining order in the Order to Show Cause of June 20, 2006 (as extended and modified by the June 26, 2006 Letter Request "So Ordered" by this Court on June 27, 2006 (Dkt. No. 51)), shall remain in full force and effect; and it is further

ORDERED that the briefing schedule for plaintiff's June 16, 2006 motion (Dkt. No. 45) is as follows: All papers in opposition to the motion shall be filed on or before October 30, 2006. Any reply papers shall be filed on or before November 10, 2006. The motion will be decided on the papers with no oral argument (as will the fully-briefed motion (Dkt. No. 18) by defendants, El Paso Merchant Energy-Petroleum Company and ANR Venture Fulton Company to dismiss the amended complaint).

IT IS SO ORDERED.

October 13, 2006
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge